

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Pilgrim Communications, Inc.	)	File Number: EB-01-DV-300
	)	
Licensee of Station KWYD(AM)	)	NAL/Acct. No. 200332800005
Colorado Springs, Colorado	)	FRN 0006-1472-19
Facility ID # 51816	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: November 20, 2002

By the District Director, Denver Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Pilgrim Communications, Inc. ("Pilgrim"), licensee of AM radio station KWYD in Colorado Springs, Colorado, apparently liable for a forfeiture in the amount of nineteen thousand dollars (\$19,000) for willful and repeated violation of Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Commission's Rules ("Rules").<sup>1</sup> Specifically, we find Pilgrim apparently liable for failing to have Emergency Alert System ("EAS") equipment operational, failing to maintain the requisite main studio presence, failing to maintain power levels between 90% and 105% of authorized power levels and exceeding the authorized nighttime power level at station KWYD.

**II. BACKGROUND**

2. During routine station inspections in the spring and summer of 2001, agents from the Commission's Denver, Colorado Field Office ("Denver Office") inspected several AM radio stations in Colorado owned and operated by Pilgrim. Several Notices of Violation ("NOVs") were issued to Pilgrim for various rule violations discovered at the stations. In this NAL, we address the most serious violations discovered at station KWYD.

3. Station KWYD in Colorado Springs is authorized to operate with 10,000 watts of power during daytime hours and 67 watts of power during nighttime hours on frequency 1580 kHz. According to the terms of the license, the average hours of sunset to sunrise for August 2001, were 8:00 p.m. to 6:15 a.m., MDT. On August 21, 2001, an agent from the Denver Office monitored the on-air signal of station KWYD, and specifically, from 7:10 p.m. to 9:00 p.m. MDT, the agent conducted numerous field strength measurements near KWYD's transmitter and observed no power level changes as required by KWYD's station authorization. During this entire period, KWYD appeared to be operating with a daytime power level of 10,000 watts and specifically from 8:00 p.m. to 9:00 p.m. exceeded the nighttime authorized power level by over 14,925%. According to the station authorization, KWYD should have switched from daytime to nighttime power at 8:00 p.m. Sometime between August 21, 2001, at 9:00 p.m. MDT and the

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<sup>1</sup> 47 C.F.R. §§ 11.35, 73.1125(a), 73.1560(a) and 73.1745(a).

subsequent inspection on August 22, 2001, KWYD switched power levels from 10,000 watts to 225 watts. On August 22, 2001, from 5:40 a.m. to 9:30 a.m. MDT, the agent again conducted numerous field strength measurements near KWYD's transmitter and observed no power level changes as required by KWYD's authorization. Based on actual transmitter readings observed at the KWYD transmitter site during the FCC inspection on August 22, 2001, KWYD had been operating with approximately 225 watts. Specifically from 5:40 a.m. to 6:15 a.m., KWYD exceeded the nighttime authorized power level by over 336% and from 6:15 a.m. to 9:30 a.m. exceeded the daytime authorized power level by over 4,444%.

4. On the morning of August 22, 2001, when the agent initially attempted to inspect the KWYD main studio at 490 Willow Springs Road, Fountain, Colorado, the main studio was closed and unstaffed. A sign on the door provided the name and telephone number of the general manager, but stated that as of July 15, 2001, the station was open by appointment only. After contacting the general manager, the agent was able to complete the inspection. During the inspection of KWYD, the agent also found that while EAS equipment was installed, the EAS system was not fully operational because the EAS system was not programmed. In addition, the agent found no logs in existence from March to August 2001, reflecting the receipt or transmission of required weekly or monthly tests.

5. On December 12, 2001, the Denver Office issued a NOV to Pilgrim for the violations discovered on August 21 and 22, 2001, at station KWYD, including, among other violations, failing to have functionally operable EAS equipment (Section 11.35), operating at power levels less than 90% and more than 105% of authorized power (Section 73.1560(a)), and failing to maintain the required main studio presence (Section 73.1125(a)). On January 4, 2002, Pilgrim responded, stating in part that the Sine Remote Control system was not programmed after KWYD's studio relocation, which occurred in March 2001. While the station's power had been manually changed over this time by station personnel, Pilgrim did not know why the station's power was not raised or lowered at the proper time on August 21 and 22, 2001. In addition, Pilgrim stated that the HollyAnn EAS equipment was also not properly programmed following the studio relocation. Pilgrim further stated that someone has now been hired to be at the main studio between 9:00 a.m. and 5:00 p.m., Monday through Friday.

### III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended, ("Act"), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>2</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup> The term "repeated" means that the violation occurred on more than one day.<sup>4</sup>

7. The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>5</sup> Section 11.35

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<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>5</sup> 47 C.F.R. § 11.1.

of the Rules provides that broadcast stations are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Between March and August 2001, and specifically on August 22, 2001, the EAS equipment at KWYD was not programmed so as to ensure that the requisite monitoring and transmitting functions were available.

8. Section 73.1560(a) of the Rules provides that AM stations must be maintained as near as practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license unless otherwise permitted by Part 73 of the Rules. On August 21 and August 22, 2001, Pilgrim station KWYD did not reduce the nighttime power and increase the daytime power at the appropriate times to conform to the power levels specified by the station authorization and operated at less than 90% and more than 105% of authorized power, in violation of Sections 73.1560(a) and 73.1745(a) of the Rules.

9. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful management and staff presence at its main studio.<sup>6</sup> The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.<sup>7</sup> In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'"<sup>8</sup> From July 15 to August 22, 2001, Pilgrim had no management or staff presence during normal business hours at the main studios of station KWYD in violation of Section 73.1125(a) of the Rules.

10. Based on the evidence before us, we find that Pilgrim apparently failed to have operational EAS equipment at station KWYD from March 2001, through August 2001, in willful and repeated violation of Section 11.35 of the Rules. We further find that Pilgrim apparently exceeded the authorized nighttime power level on August 21, 2001, and failed to maintain power levels between 90% and 105% of authorized power levels at station KWYD on August 21 and August 22, 2001, in willful and repeated violation of Sections 73.1560(a) and 73.1745(a) of the Rules. Additionally, we find that Pilgrim failed to maintain the required management and staff presence at station KWYD from July 15, 2001, to August 22, 2001, in willful and repeated violation of Section 73.1125(a) of the Rules.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>9</sup> and Section 1.80 of the Rules,<sup>10</sup> the base forfeiture is \$8,000 for not having operational EAS equipment in violation of Section

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<sup>6</sup> See *Main Studio and Program Origination Rules*, 3 FCC Rcd 5024, 5026 (1988).

<sup>7</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 and n.2 (1992), *clarified*, 7 FCC Rcd 6800 (1992).

<sup>8</sup> *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd 6800, 6802 (1992).

<sup>9</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 C.F.R. § 1.80.

11.35,<sup>11</sup> \$4,000 for exceeding power limits at nighttime in violation of Sections 73.1560(a) and 73.1745(a) of the Rules;<sup>12</sup> and \$7,000 for failing to maintain the required main studio presence in violation of Section 73.1125(a) of the Rules.<sup>13</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstance, extent and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>14</sup> Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$19,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Pilgrim Communications, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of nineteen thousand dollars (\$19,000) for willfully and repeatedly violating Sections 11.35, 73.1125(a), 73.1560(a), and 73.1745(a) of the Rules at station KWYD.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Pilgrim Communications, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved

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<sup>11</sup> See, e.g., *Maria L. Salazar*, 17 FCC Rcd 14090 (Enf. Bur. 2002); *Arnold Broadcasting Company, Inc.*, 16 FCC Rcd 13600, 13602 (2001) (both imposing \$8,000 forfeitures for not having EAS equipment installed and operational.)

<sup>12</sup> See, e.g., *Buchanan Broadcasting Company, Inc.*, 15 FCC Rcd 24363 (2000) (upholding a \$4,000 forfeiture for exceeding nighttime power limits).

<sup>13</sup> See, e.g., *American Broadcasting Educational Foundation*, 15 FCC Rcd 8630, 8630 (Enf. Bur. 2000) (imposing a \$7,000 forfeiture for violation of the main studio rules).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>15</sup> See 47 C.F.R. § 1.1914.

in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and certified mail number 7001 0320 0002 9702 9592, return receipt requested, to Pilgrim Communications, Inc., 54 Monument Circle, Suite 250, Indianapolis, Indiana 46204.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo  
District Director, Denver Office

Enclosure: Attachment A